

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 00-33898

CATHERINE L. PRINTUP  
a/k/a CATHERINE FLOWERS  
a/k/a KATIE PRINTUP  
a/k/a CATHERINE HOLLAND

Debtor

CATHERINE L. PRINTUP

Plaintiff

v.

Adv. Proc. No. 00-3152

HOUSEHOLD FINANCIAL SERVICES,  
INC. and ASSOCIATES FINANCIAL  
SERVICES CO., INC.

Defendants

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***DISTRICT COURT No.:*** 3:01-cv-451

***DISPOSITION:*** September 4, 2002 Judge Leon Jordan affirmed bankruptcy court decision.

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HOUSEHOLD FINANCIAL SERVICES,  
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SERVICES CO., INC.

Defendants

**MEMORANDUM**

APPEARANCES: JAMES M. CRAIN, ESQ.  
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**RICHARD STAIR, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

On December 5, 2000, the Debtor filed an Objection to Claim of Secured Status (Complaint). The Complaint asks the court to determine that two Deeds of Trust encumbering the Debtor's residence are invalid encumbrances under Tennessee law because each instrument fails to identify a trustee. The parties have briefed their respective positions. All facts and documents essential to the resolution of this adversary proceeding are before the court on a written Stipulation of Facts filed by the Debtor and Household Financial Services, Inc. (Household) on May 18, 2001.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(K) (West 1993).

## I

In the process of purchasing their home at 2315 Mount Olive Road, Knoxville, Tennessee, the Debtor and her now-estranged husband, Duane Printup, borrowed approximately \$80,000.00 which they secured by the property through two Deeds of Trust executed on July 10, 1997.<sup>1</sup> Each instrument purported to grant an interest in the residence as security for two Notes also executed on July 10, 1997, between the Printups and Eagle Funding Group, Inc. (Eagle). Specifically, each Deed of Trust provided that the Borrower (the Printups) "irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in Knox County, Tennessee [] which has the address of 2315 Mount Olive Road[.]" Each Deed identified the Printups as grantors and named Eagle as the beneficiary. The space for identification of the grantee (or trustee), however, was left blank on both Deeds.

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<sup>1</sup> The Debtor and Mr. Printup own their home as tenants by the entirety. See *In re Arango*, 136 B.R. 740, 741 (Bankr. E.D. Tenn. 1992).

Each Deed was subsequently assigned by Eagle to Vanderbilt Mortgage. The first Deed, corresponding to a \$70,975.00 Note, was later assigned to Household. The second Deed, referencing an \$8,350.00 Note, was ultimately assigned to Associates Financial Services Co. (Associates).<sup>2</sup> Both Deeds were recorded on July 14, 1997. The Debtor filed her Chapter 7 petition on September 27, 2000. The record before the court indicates that none of the parties were aware of the missing grantee information prior to the Debtor's bankruptcy filing.

## II

In Tennessee, a deed of trust is commonly used instead of a traditional mortgage, conveying to a third party trustee (the grantee) legal title to the mortgaged property. *See Watson v. McCabe*, 527 F.2d 286, 288 (6<sup>th</sup> Cir. 1975). The trustee then holds the property as security for the payment of the underlying debt to the lender. *See Commerce Fed. Sav. Bank v. FDIC*, 872 F.2d 1240, 1241 n.1 (6<sup>th</sup> Cir. 1989).

A deed of trust, in substance and legal effect, is a mortgage. *See id.*; *Womack Lumber Co., Inc. v. Guaranty Mortgage Co. (In re Bain)*, 527 F.2d 681, 686 (6<sup>th</sup> Cir. 1975); *Bidwell v. Paul*, 64 Tenn. 693 (1875). "The object of a mortgage is to obtain a security beyond a simple reliance on the honesty and ability of the debtor to pay, and to guard against the risk of all the property of the debtor being swept off by other creditors, by fastening a specific lien upon that covered by the mortgage." *Tennessee Nat'l Bank v. Ebbert & Co.*, 56 Tenn. 153, 1872 WL 3834, at \*4 (1872).

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<sup>2</sup> On April 3, 2001, the Debtor filed a Motion for Judgment by Default against Associates. By Order dated April 27, 2001, the court entered Associates' default pursuant to FED. R. CIV. P. 55(a) but, to avoid potentially inconsistent rulings, deferred entry of a default judgment under FED. R. CIV. P. 55(b) pending the final ruling on the Debtor's Complaint.

The Debtor and Household each cite authority offering at least tangential support for their respective theories regarding the validity of the present Deeds of Trust in light of the omitted trustee identification. However, the court need not address the ultimate state law question presented by this case because the matter may be decided under a more settled principle - the judiciary's power to reform a written instrument in cases of fraud or mutual mistake. *See Barker v. Harlan*, 71 Tenn. 505, 1879 WL 3873, at \*2 (1879); *Cromwell v. Winchester*, 39 Tenn. 389, 1859 WL 3305, at \*1 (1859); *accord Rolane Sportswear, Inc. v. United States Fidelity & Guar. Co.*, 407 F.2d 1091, 1096 (6<sup>th</sup> Cir. 1969); *ORNL Fed. Credit Union v. Wilson (In re Wilson)*, 261 B.R. 664, 667 (Bankr. E.D. Tenn. 2001). A mutual mistake is "a mistake common to all the parties to the written contract or the instrument or in other words *it is a mistake of all the parties laboring under the same misconception.*" *Wilson*, 261 B.R. at 667 (emphasis added) (quoting *Collier v. Walls*, 369 S.W.2d 747, 760 (Tenn. Ct. App. 1962)).

It is undisputed that Eagle and the Printups intended to create a valid security interest by their execution of the Notes and Trust Deeds. From the date of execution, July 10, 1997, until the Debtor's post-filing discovery of the omitted trustee identification, all parties labored under the same misconception - that the Deeds of Trust were complete. "If, by mistake, the writing contains less or more, or something different from the intent of the parties, and this be clearly made out by proof entirely satisfactory, a Court of Equity will reform the contract so as to make it conform to such intent." *Cromwell*, 1859 WL 3305, at \*1.

There has been no intervention of third party rights that would preclude reformation in this case. *See Wilson*, 261 B.R. at 668. No third party has been "injured by, misled by, or acted to its prejudice in reliance" on the missing grantee information. *Id.* The Debtor executed the Deeds

of Trust for the express purpose of securing approximately \$80,000.00 needed to fund the purchase of her home. She received what she bargained for and should not now be granted an unmerited windfall at the expense of her lenders.

The Deeds of Trust will be reformed by compelling the Debtor to execute documents presented to her for registration by the Defendants sufficient to designate a trustee under each of the disputed Deeds.<sup>3</sup>

In the scheduling Order entered on April 27, 2001, the court deferred ruling on the issue of the amount of the Defendants' allowed secured claim pending a determination regarding the validity of the Deeds of Trust.<sup>4</sup> The effect of the present ruling in reforming the Deeds of Trust is to validate the Deeds as between the Debtor and Defendants. However, as the property encumbered by the Deeds of Trust is owned by the Debtor and her husband as tenants by the entireties, only the Debtor's right of survivorship constitutes property of her bankruptcy estate. *See In re Arango*, 136 B.R. 740, 741 (Bankr. E.D. Tenn. 1992). Whether the Deeds of Trust executed by the Debtor and her husband even encumber the Debtor's right of survivorship is problematic. *Id.* ("[T]he survivorship interest can be sold, encumbered, or otherwise alienated [only] by an individual spouse acting alone." (citation omitted)). The Debtor's obligations to the Defendants were discharged on January 26, 2001. Arguably, there is no allowed secured claim to value.

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<sup>3</sup> The Defendants are confronted with the problem of having but one of the co-owners of the property before the court. The Debtor's husband, Duane Printup, is not a party to this action and the court, therefore, can make no ruling as to him.

<sup>4</sup> In paragraph 3 of the scheduling Order, the court incorrectly refers to the Plaintiff and her "now deceased husband." Mr. Printup is not deceased.

Furthermore, the court does not believe the Debtor has standing to now seek a determination of the amount of the Defendants' allowed secured claims. Claims objections in a Chapter 7 case are within the exclusive purview of the Chapter 7 Trustee. See 11 U.S.C.A. § 704(5) (West 1993); *In re Woods*, 139 B.R. 876, 877-78 (Bankr. E.D. Tenn. 1992) ("The responsibility for examining and objecting to claims rests with the trustee. To permit debtors to assume that responsibility would permit them to usurp the trustee's authority and to require the courts to rule on objections where the allowance or disallowance of the claim is meaningless to the administration of the estate.").

For the above reasons, the judgment rendered herein represents the final judgment of the court on all issues raised in the Plaintiff's Complaint.

FILED: July 26, 2001

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

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**J U D G M E N T**

For the reasons stated in the Memorandum filed this date containing findings of fact and conclusions of law as required by FED. R. CIV. P. 52(a), it is ORDERED, ADJUDGED, and DECREED as follows:

1. The Deeds of Trust signed by the Plaintiff on July 10, 1997, in favor of the Defendants, as assignees of Eagle Funding Group, Inc., are reformed as to the Plaintiff and Defendants to include the name of the trustee under each Deed of Trust.



2. The Plaintiff shall, upon presentation by each Defendant, execute an amended Deed of Trust or such other document as is sufficient to designate the name of a trustee under each of the July 10, 1997 Deeds of Trust which are the subject to this adversary proceeding.

3. The Deeds of Trust signed by the Plaintiff on July 10, 1997, in favor of the Defendants, as assignees of Eagle Funding Group, Inc., having been reformed, constitute valid encumbrances against the Plaintiff's interest in the residence at 2315 Mount Olive Road, Knoxville, Tennessee.

ENTER: July 26, 2001

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE